

BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

CHRISTOPHER STEARNS,)	Case No. RIF-04-0002
)	
Appellants,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
DEPARTMENT OF FISH AND WILDLIFE,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held in the Personnel Appeals Board Hearing Room, 2828 Capitol Boulevard, Olympia, Washington, on January 11, 2005.

1.2 Appearances. Appellant Christopher Stearns was present and was represented by Herman Gilman of the Washington Federation of State Employees. Mitchel Sachs, Assistant Attorney General, represented Respondent Department of Fish and Wildlife.

1.3 Nature of Appeal. This is an appeal of a reductions-in-force (RIF) action due to lack of funds resulting from the expiration of a project.

II. FINDINGS OF FACT

2.1 Appellant was a project employee for Respondent Department of Fish and Wildlife (F&W). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 23, 2004.

2.2 In August 2002, F&W requested the establishment of a Forage Fish and Spawning Habitat Survey Project, and the Department of Personnel approved two project positions. The project was targeted for a two-year period due to the scope of the work and the duration of project funding, which was obtained through various grants, including the National Fish and Wildlife Foundation, and administered by the Northwest Straits Commission in Island County.

2.3 On October 31, 2002, the department appointed Appellant to a project position as a Fish and Wildlife Biologist 1, position number P881, within the Fish Program, effective November 1, 2002 through June 30, 2004. Appellant was assigned to the Forage Fish and Spawning Habitat Survey, and his official duty station was in the La Conner District Office. Dan Penttila, a permanent Biologist 3 for F&W, became Appellant's supervisor. Appellant's October 31 appointment letter indicated the project was funded through June 30, 2004, but also stated "project employment is contingent on state, federal, or other grant funding and can be terminated early or extended to a later date."

2.4 An interagency agreement between F&W and Island County specified that Appellant's position was to perform biologist duties and other forage fish habitat surveys in Whatcom, Skagit, and Snohomish counties. Gary Wood, from the Island County Marine Resource Committee, negotiated and managed the project funding on behalf of Island County. Although F&W anticipated the project lasting through June 30, 2004, the interagency contract was effective October

1, 2002, through December 31, 2003, and Island County failed to secure the necessary funding to extend the contract beyond that date.

2.5 In November 2003, Marine Program Manager Norm Lemberg alerted the administrators of F&W's Fish Program that the project money received from the National Fish and Wildlife Foundation and controlled through Island County was going to be expended on December 31, 2003. As a result, the funding source for Appellant's position was eliminated, and Regional Program Manager Charles Phillips requested approval to initiate a reduction-in-force of Appellant's position.

2.6 The agency's Reduction in Force Plan, Section III, provides, "If a reduction-in-force becomes necessary due to lack of funds . . . the Director or designated appointing authority shall determine which positions are to be abolished or vacated. The determinations will be based upon the need for particular positions and not upon named employees." With regard to project employment, both the agency RIF Plan and WAC 356-30-145 note that project employees only have reduction-in-force rights within the project.

2.7 Sandra Turner, Personnel Manager, determined the RIF options for Appellant. Ms. Turner reviewed Appellant's personnel file and employment history with the agency. Since Appellant was hired as a project employee, his only RIF options were within the project. Due to the elimination of the Forage Fish and Spawning Habitat Survey Project, Appellant had no formal RIF options. However, the agency's RIF Plan allows employees with at least two years of project service to be placed on a RIF register, and Ms. Turner determined that Appellant had two years of project experience with the department.

2.8 By letter dated December 12, 2003, Lew Atkins, Assistant Director of the Fish Program and Appellant's appointing authority, notified Appellant that his Biologist 1 position was going to be

1 eliminated due to a lack of funds, effective December 31, 2003. Mr. Atkins informed Appellant
2 that he had no formal options for continued employment, but that he was eligible to be placed on
3 the Fish and Wildlife Biologist 1 RIF register.

6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Respondent argues that a lack of funds existed after the Forage Fish and Spawning Habitat
8 Survey Project ended on December 31, 2003. Respondent acknowledges the project was expected
9 to be in effect through June 30, 2004, but asserts that despite efforts to work with Island County,
10 agency managers were unsuccessful in renewing the contract. Respondent argues the lack of funds
11 resulting from the termination of the contract with Island County directly impacted the funding of
12 Appellant's project position. Respondent argues that Appellant's reduction-in-force was in
13 compliance with the agency's RIF Plan and WAC 356-30-145, dealing with project employment.

14
15 3.2 Appellant argues that even though the grant money acquired through the contract with
16 Island County expired, the project was not complete, and the agency had available money to
17 complete some of the tasks started by Appellant and similar duties in Thurston and Mason Counties.
18 Appellant contends the grants funding his position were poorly managed, which made it difficult to
19 account for all of the allocated funds. Appellant asserts there was similar work available in
20 Thurston and Mason Counties and asserts that had he been allowed to work on the project another
21 two months, he would have been afforded better RIF options in terms of seniority.

24 **IV. CONCLUSIONS OF LAW**

25 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.
26

1 4.2 Respondent may layoff an employee for lack of funds or lack of work. WAC 251-10-
2 030(1). In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-
3 170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid
4 the employee off for the reason stated in the RIF letter. O’Gorman v. Central Washington
5 University, PAB No. L93-018 (1995).

6
7 4.3 The issue here is whether Respondent complied with WAC 356-30-330(1) when it laid off
8 Appellant because of a lack of funds and WAC 356-30-145, related to project employment. WAC
9 356-30-330 (1) permits an appointing authority to layoff an employee, in part, because of a lack of
10 funds. WAC 356-30-145 provides reduction-in-force rights to project employees “within their
11 project boundaries only.” Respondent provided credible evidence that Appellant’s project position
12 was contingent on grant money received and administered through a contract with Island County.
13 Further, Appellant’s appointment letter clearly states that the grant money funding his position
14 could be terminated or extended at any time. While it is undisputed that work still remained within
15 the Forage Fish and Spawning Habitat Survey Project, Appellant’s position was eliminated due to a
16 lack of funds, not because of a lack of work. Despite efforts by F&W, the contract with Island
17 County was not renewed. In this case, Respondent has proven by a preponderance of the credible
18 evidence that a lack of funds existed, which supported the appointing authority’s decision to
19 eliminate position #P881, resulting in Appellant’s layoff from that position.

20
21 4.4 Respondent has met its burden of proof that Appellant’s layoff was the result of a lack of
22 funds, and the appeal of Christopher Stearns should be denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Christopher Stearns is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Busse Nutley, Vice Chair

Gerald L. Morgen, Member